THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.19695 OF 1995

DATED: -10-2006

BETWEEN

Mohd. Khaja Moinuddin,
S/o. Late Mohd. Allauddin,
R/o. Hyderabad.

...PETITIONER

AND

A.P. Agricultural University,
Rep. by its Registrar,
Rajendranagar, Hyderabad.

...RESPONDENT

ORDER:

Petitioner seeks a Writ of Mandamus to direct the Andhra Pradesh Agricultural University (APAU) to fix the retirement benefits due to him from 12.02.1980 in the pay-scale of Lab-Technician; to pay salary for the period from 25.12.1977 to 12.02.1980 in the post of Technician; to pay the interest on the belated payments of retirement benefits from 12.02.1980 and also for the payment of compensation on account of abnormal delay on the part of the respondent university in accepting his voluntary retirement.

Learned counsel for the petitioner submits that the petitioner joined as Lab Attendant in Osmania University (OU) in 1960 and later promoted as Lab Technician in 1963. The services of the petitioner were transferred along with the transfer of college of Veterinary Science & Animal Husbandary from OU to APAU (presently known as Acharya N.G. Ranga Agricultural University) as Typist, with effect from 11.01.1966 protecting his

pay in the post of Lab Technician, since the post of typist is a lower post. Admittedly, the services of the petitioner were utilized as Typist up to 1977 and while he was working as Typist at Maize Research Station, Amberpet, he applied leave on medical grounds and the respondent university treated the same as unauthorized absence from 25.12.1977 and imposed punishment of stoppage of increment. He further submits that though the petitioner applied leave from time to time the respondent university issued charge sheet dated 20.12.1981 and though the petitioner submitted an explanation, he was removed from service by order dated 28.07.1982 with effect from 25.12.1977. The petitioner submitted an appeal on 26.11.1982 enclosing copies of his earlier explanations dated 12.02.1980 wherein he requested voluntary retirement. However, the respondent university passed orders on 17.05.1990 revoking the order of termination dated 28.07.1982 and permitting the petitioner to retire with effect from 12.02.1980 and the period from 25.12.1977 to 11.02.1980 was treated as extra ordinary leave.

It is submitted that the petitioner is entitled to salary as the order dated 17.05.1990 does not say that the said period is to be treated extra ordinary leave without pay. Thereafter, the petitioner made several representations for fixation of retirement with effect from 12.02.1980 on benefits in the pay scale of Lab Technician but the same have not been considered and no orders have been passed.

Counter has been filed on behalf of the respondent stating that the petitioner while working as Typist at Maize Research Station. Amberpet, stayed away from duty from 25.12.1977 unauthorizedly and therefore, after assuming the charge after unauthorized absence, vide memo dated 28.06.1978 the petitioner was asked to submit an explanation as to why disciplinary action should not be taken against him. After considering the explanation of the petitioner orders have been passed vide memo dated 25.03.1979 stopping his increment for a period of one year with cumulative effect. However, he continued to be absent from duty and requested

extension of leave for one year from 01.04.1979 to 31.03.1980. The leave applied by him was refused and he was asked to join duty on or before 30.06.1979. The petitioner did not joint the duty and as he failed to furnish any reply to memo dated 21.06.1979 and that he failed to resume duty, a charge was framed vide memo dated 20.12.1981 asking him to submit an explanation within 15 days as to why disciplinary action should not be taken against him. To the said charge memo dated 20.12.1981 asking the petitioner to submit an explanation within 15 days and to the subsequent show cause notice dated 20.03.1982 to show cause as to why he shall not be removed from service, which was received by him on 02.04.1982, the petitioner failed to submit any explanation and therefore, final orders were passed vide proceedings dated 28.07.1982 removing the petitioner from services with effect from 26.12.1977

i.e. the day from which he was absent unauthorizedly from duty. Against the said order the petitioner preferred an appeal dated 26.11.1982 with a request to accept his voluntary retirement on health grounds with effect from 12.02.1980 as he has completed 20 years of service as on that day. The respondent university considering the appeal of the petitioner sympathetically decided to revise the earlier order of removal from services and permitted him to avail voluntary retirement from services with effect from 12.02.1980 after regularizing his absence from 25.12.1977 to 11.02.1980 as extra ordinary leave, which means without pay and allowance, since he is a transferred employee from OU, only for the purpose of giving benefit of voluntary retirement scheme. Accordingly his request for voluntary retirement with effect from 12.02.1980 was considered, after obtaining the consent of the parent department i.e. OU, by the Board of Management of APAU at its meeting held on 31.03.1990 approving the said proposals. Accordingly, orders were issued vide proceedings dated 17.05.1990 revoking the earlier orders dated 28.07.1982 removing the petitioner from services and permitted him to retire voluntarily with effect from 12.02.1980 treating the unauthorized absence from 25.12.1977 to 11.02.1980 as EOL

and the said period was counted as qualifying service for the purpose of pension. Accordingly, the petitioner submitted his pension papers on 20.08.1991 but due to non-submission of certain particulars the proposals were returned and they were finally received by the University in June 1992 and the pensionary benefits were sanctioned to the petitioner vide proceedings dated 16.05.1994. Thus, it is stated that there is no lapse on the part of the University in settling the pensionary benefits pursuant to the request of petitioner to consider his voluntary retirement.

After receiving the pensionary benefits only the petitioner submitted a representation in September 1994 to fix his retirement benefits in the pay scale of Lab Technician and also to pay salary from 25.12.1977 to 11.02.1980 in the post of Lab Technician and to pay interest and compensation for the belated settlement of pensionary benefits.

As already stated the delay on the part of the respondent university in payment of pensionary benefits was sufficiently explained and the respondent university gave the benefit of voluntary retirement to the petitioner by revoking the earlier orders removing the petitioner from services on an application filed by the petitioner. The delay occurred in disposing the appeal was also due to the reason that the respondent university consulted with OU for its consent and later the Board of Management of APAU approved the proposals on 31.03.1990 and immediately passed orders on 17.05.1990 duly treating the period of absence from 25.12.1977 to 11.02.1980 as EOL and the said period was counted as qualifying service for the purpose of pension alone. EOL means without pay and allowance, therefore, the question of salary and allowances does not arise for the said period, as admittedly, the petitioner did not work for the said period.

It is stated that the contention of the petitioner that he is entitled to increment for during the said period as his unauthorized absence was treated as EOL is without any basis, as the petitioner did not work during the said period, as such he is not entitled to any pay and allowance, therefore, the question of

increment also does not arise.

Learned counsel for the respondent university submits that the petitioner also did not submit the pension papers to consider his pension based on the pay scale of Lab-Technician but he submitted the pension papers based on the pay paid to him as Typist alone.

He further submits that as per Rule 33(a) of the General Rules of Part – II of the State and Subordinate Service Rules relating to seniority lays down that the seniority of a person in a service, class, category or grade shall be determined by the date of his first appointment to such service, class, category or grade. If any portion of the service of such person does not count towards probation his seniority shall be determined by the date of commencement of his service, which counts towards probation. Thus only regular service rendered in a particular service or class or category or grade alone will count for seniority in that particular service, class, category or grade and not service rendered in any other post belonging to a different service, class, category or grade. The transfer of a person from one class or category of a service to another class or category carrying the same pay or scale of pay shall not be treated as first appointment to the later for purpose of his seniority. Admittedly, the transfer of the petitioner from OU to APAU is not t the same post or class and the post in which the petitioner worked did not carry the same pay or scale, therefore, the petitioner does not satisfy the conditions laid down in Rule 33(a) of the aforesaid rules. The post of Lab-Technician belongs to a different service i.e. Subordinate service whereas the Typist post belongs to the Ministerial Service and also the scales of pay of the two posts are different. Therefore, the question of counting the service rendered in the post of Lab-Technician for seniority in the post of Typist does not arise even under the Government rules. Therefore, it is submitted that the petitioner is not entitled to any fixation of his pay in the post of Lab-Technician. It is further submitted that the payment of salary from 25.12.1977 to 11.02.1980 does not arise as the said unauthorized absence

period was treated as EOL, which means without pay and allowances, and the said period was counted towards qualifying service in terms of Rule 21, as it existed prior to 31.12.1981 for purpose of voluntary retirement.

Admittedly, the petitioner did not protest at any point of time for payment of salary applicable to the post of Lab-Technician while working as Typist in APAU and the petitioner accepted the lower pay in the post of Typist though his pay was protected in OU. Petitioner for obvious reasons never wanted to go back to the parent department and he voluntarily accepted the post of Typist and has drawn salary applicable to the said post, which belongs to Ministerial service.

When the petitioner was not having any grievance while receiving salary applicable to the post of Typist from 11.01.1966 till the date of his voluntary retirement and more so, when he absented himself unauthorizedly from 25.12.1977, I am of the opinion that the respondent university sympathetically considered the said period as EOL so as to enable the petitioner to get pensionary benefits. Therefore, for the aforesaid reasons, I do not see any merits in the writ petition.

The writ petition is accordingly dismissed. However, there shall be no order as to costs.

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V, ESWARAIAH, J

October , 2006
DSK